AO106 (Rev. 12/03) Affidavit for Search Warrant

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)

One Motorola i425 Cellular Telephone
Serial Number: 364VJARYSV
SIM Card & ID Number: 000821444544300
Black/White in Color

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Case Number: '08 MJ 8785

I, DOUGLAS STRUCKMEYER being duly sworn depose and say:

I am a(n) Special Agent with U. S. Immigration & Customs Enforcement (Official Title) and have reason to believe that ☐ on the person of or ☑ on the property or premises known as (name, description and/or location)

REFER TO ATTACHMENT A

in the SOUTHERN District of CALIFORNIA there is now concealed a certain person or property, namely (describe the person or property to be seized)

REFER TO ATTACHMENT B

which is (state one or more bases for search and seizure set forth under Rule 41(c) of the Federal Rules of Criminal Procedure)

electronic data that constitutes evidence of a criminal offense and electronic data which is and has been used as the means for committing a criminal offense

concerning a violation of Title 21 United States Code, Section(s) 952, 960, 963 & 841(a)(1)
The facts to support a finding of probable cause are as follows:

REFER TO ATTACHED AFFIDAVIT OF ICE AGENT STRUCKMEYER.

FILED
AUG 29 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

Continued on the attached sheet and made a part hereof: ☑ Yes ☐ No

[signature]
Signature of Affiant

Sworn to before me and subscribed in my presence,

August 29, 2008 at EL CENTRO, CALIFORNIA
Date City State

Peter C. Lewis, U.S. Magistrate Judge
Name of Judge, Title of Judge

[signature]
Signature of Judge

ATTACHMENT A

PROPERTY/ITEMS TO BE SEARCHED

The property/items to be searched are described as:

One Motorola i425 Cellular Telephone, Serial Number: 364VJARYSV, SIM Card & ID Number: 000821444544300, black/white in color, presently in the custody of U. S. Immigration, and Customs Enforcement, 333 Waterman Avenue, El Centro, California.

ATTACHMENT B

DESCRIPTION OF PROPERTY/ITEMS TO BE SEARCHED

The items to be seized from each cellular phone are electronic data that constitute evidence of the commission of a criminal offense, and electronic data that is, and has been used as the means for committing a criminal offense. The specific criminal offenses involved are violations of 21, U. S. C., §§§ 952, 960 and 963, Conspiracy to Import Cocaine, 21, U. S. C., § § 952 and 960, Importation of a Controlled Substance, 21, U. S. Code, §§ 841(a)(1), and 846, Conspiracy to Possess a Controlled Substance with Intent to Distribute, and 21, U. S. C. § 841(a)(1) and 18, U.S.C., § 2, Possession of Cocaine with Intent to Distribute and Aiding and Abetting. The items to be seized include the electronic data described below:

a. The phone numbers and/or direct-connect and/or names and identities assigned to the cellular phone;

b. Digital, cellular, and/or telephone numbers and/or direct connect numbers, names and identities stored in the directories;

c. Phone numbers and direct-connect numbers dialed from the cellular phone and stored in memory;

d. The last number dialed from the cellular phone and;

e. Any other electronic information in the stored memory of the cellular phone, including but not limited to text messages and voicemail, relating to violations of 21, U. S. C. §§§ 952, 960 and 963, Conspiracy to Import Cocaine, 21, U. S. C., §§ 952 and 960, Importation of a Controlled Substance, 21, U. S. C., §§ 841(a)(1), and 846, Conspiracy to Possess a Controlled Substance with Intent to Distribute, and 21, U.S.C., § 841(a)(1) and 18, U.S.C., § 2, Possession of Cocaine with Intent to Distribute and Aiding and Abetting.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Search of:	) Magistrate Case No.:
	)
One Motorola i425 Cellular Telephone	) AFFIDAVIT OF ICE SPECIAL AGENT
Serial Number: 364VJARYSV	) DOUGLAS STRUCKMEYER IN
SIM Card & ID Number: 000821444544300	) SUPPORT OF SEARCH WARRANT
Black/ White in Color	)
	)
One LG MP3 Cellular Telephone	)
Serial Number: 804MMPX068056	)
SIM Card and ID Number:8952020607610336192F	)
Black in Color	)

I, Douglas Struckmeyer, being first duly sworn, hereby depose and say:

PURPOSE

1. This affidavit is made in support of an application for a search warrant for federal agents to search the following cellular telephone for electronic data that constitutes evidence of the commission of a criminal offense, and electronic data which is and has been used as the means for committing a criminal offense: (1) One Motorola i425 Cellular Telephone, Serial Number: 364VJARYSV, SIM Card & ID Number: 000821444544300, Black/ White in Color; and (2) One LG MP3 Cellular Telephone, Serial Number 804MMPX068056, SIM Card & ID Number 8952020607610336192F, Black in Color.

BACKGROUND AND EXPERTISE

2. I am a special agent (SA) with United States Immigration and Customs Enforcement (ICE), which is a component agency of the Department of Homeland Security. I have been employed as an ICE Special Agent since April 1, 2007. Prior to that, I was a Border Patrol Agent with Customs and Border Protection from December 14, 1997 to March 31, 2007. I also served in the United States Army from February 1992 to December 1996. I have been cross-designated by the United States Drug Enforcement Administration (DEA) to conduct controlled substances investigations and enforce provisions of the Federal Controlled Substances Act, pursuant to Title 21 of the United States Code. I have spoken with other agents with extensive experience in controlled substances investigations.

3. I am currently assigned to the ICE, Office of the Assistant Special Agent in Charge (ASAC), Office of Investigations, El Centro, California. I am assigned to conduct investigations of criminal violations relating to the smuggling and transportation of controlled substances. I have personally arrested or participated in the arrest of several persons for violations of the Controlled Substances Act. In each of these cases, I have conducted interviews with the arrested persons and with their associates. Through these interviews, I have gained a working knowledge and insight into the typical working of controlled substance traffickers and smugglers. I have also gained extensive information as to the normal operational habits of persons who make their living as controlled substance traffickers.

4. Through the course of my duties, I have talked with experienced controlled substances investigators about the activities of controlled substances traffickers and I have received on the job training dealing with the activities of controlled substances traffickers practiced locally. I am aware that it is a common practice for controlled substances traffickers to use cellular telephones, pagers and portable radios to maintain communications with co-conspirators to further their criminal activities. I have made numerous arrests for violations of Title 21 of the United States Code, and am

familiar with the identification of all types of controlled substances by sight and color.

5. This statement is made in support of an application for a search warrant to search two cellular telephones that are believed to contain evidence of violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841(a)(1), possession of a controlled substance with intent to distribute, and Title 21 United States Code Section 846, attempt and conspiracy.

6. This affidavit does not contain all of the information known to federal agents regarding this investigation, but rather, contains only those facts believed to be necessary to establish probable cause.

7. Based upon my training and experience as a Special Agent, consultations with other Special Agents and law enforcement officers experienced in controlled substance trafficking investigations and all the facts and opinions set forth in this affidavit, I submit the following:

a. Drug traffickers will use cellular phones because they are mobile and they have instant access to phone calls and voice messages;

b. Drug traffickers believe that cellular phones provide greater insulation and protection against court-ordered wiretaps and they believe in the inability of law enforcement personnel to simultaneously track the originating and destination phone numbers of calls placed to and from their cellular phones;

c. ICE agents will deliver the cellular phone to ICE Computer Forensic Agents (CFA) who are trained and have appropriate experience in the area of information and date retrieval relative to cellular telephones. The CFA's may be able to determine the personal identification number, turn on the cellular phone, and retrieve data from the cellular phones. Unlike typical computers, cellular phones do not have hard drives and store information in volatile memory. Current technology does not provide solutions for imaging the data stored in cellular phone memory. Consequently, the phone will have to be powered up and turned on by a CFA. The examination may be delayed due to the lack of the appropriate charging device. The CFA will need to manually examine the cellular phone and its functions and record their findings using digital photography. This process is time and labor intensive and, depending upon the workload of the few certified CFAs available, may take several weeks or longer. Therefore, your affiant is requesting that the time for service be extended to thirty days.

SUMMARY OF INVESTIGATION / FACTS SUPPORTING PROBABLE CAUSE

8. This affidavit is based on the reports and documents furnished to U. S. Immigration & Customs Enforcement Special Agent Douglas Struckmeyer.

9. On August 7, 2008, I, Special Agent Douglas Struckmeyer, responded to the Calexico, California, West Port of Entry (POE) regarding a seizure of cocaine.

10. According to an incident report prepared by U. S. Customs & Border Protection Officer Castillo on August 7, 2008, at approximately 1057 hours, Jose AHUMADA-Navarrete entered the United States at the Calexico, California, West Port of Entry. AHUMADA was the driver and registered owner of a 2007 Chevrolet Tahoe, bearing Baja California, Mexico license plate AJA1495.

11. According to an incident report prepared by Canine Enforcement Officer J. Jones his assigned Narcotic Detector Dog alerted to the rear cargo area of the 2007 Chevrolet Tahoe. A subsequent inspection of the vehicle revealed 25 packages concealed in a non-factory compartment in the rear floor area. A sample of a white powdery substance was removed from one of the packages, which field-tested positive for cocaine. The 25 packages had a combined net weight of approximately 28.22 kilograms (62.08 pounds).

12. On August 7, 2008, your affiant (SA Struckmeyer), verbally advised AHUMADA of his rights per Miranda. AHUMADA stated he understood his rights and was not willing to answer questions without the presence of an attorney.

13. Two cellular telephones were found on the person or in the vehicle of AHUMADA. The phones were later identified as one (1) One Motorola i425 Cellular Telephone, Serial Number:

364VJARYSV, SIM Card & ID Number: 000821444544300, Black/ White in Color; and (2) One LG MP3 Cellular Telephone, Serial Number 804MMPX068056, SIM Card & ID Number 8952020607610336192F, Black in Color.

14. On August 7, 2008, AHUMADA was transported to the Imperial County Jail to await his Initial Appearance before a U. S. Magistrate Judge.

15. On August 8, 2008, AHUMADA was arraigned before U. S. Magistrate Judge Peter C. Lewis on a complaint for violation of Title 21, United States Code, 952 and 960, Importation of a Controlled Substance (28.22 kilograms of cocaine).

17. On August 21, 2008, AHUMADA was arraigned before U. S. Magistrate Peter C. Lewis on an indictment: Count 1: 21 U.S.C. §§§ 952, 960 & 963, Conspiracy to Import Cocaine; Count 2: 21 U.S.C. §§ 952 & 960, Importation of Cocaine; Count 4: 21 U.S.C. §§ 841(a)(1) & 846, Conspiracy to Distribute Cocaine; Count 5: 21 U.S.C. § 841(a)(1) Possession of Cocaine with Intent to Distribute and 18 U.S.C. § 2, Aiding and Abetting.

18. A Motion Hearing/Trial Setting was for September 26, 2008, at 1:30 p.m. before U. S. District Court Judge Janis L. Sammartino.

CONCLUSION

19. Based on the facts contained in this affidavit and my experience and training, I submit that there is probable cause to believe that one (1) One Motorola i425 Cellular Telephone, Serial Number: 364VJARYSV, SIM Card & ID Number: 000821444544300, Black/ White in Color; and (2) One LG MP3 Cellular Telephone, Serial Number 804MMPX068056, SIM Card & ID Number 8952020607610336192F, Black in Color, contains evidence of violations of Title 21, United States Code, Sections 952, 960 and 963, Conspiracy to Import Cocaine, Title 21, United States Code, Sections 952 and 960, Importation of a Controlled Substance, Title 21, United States Code, Section 841(a)(1), and 846, Conspiracy to Possess a Controlled Substance with Intent to Distribute, and Title 21 United States Code, Section 841(a)(1) and Title 18 United States Code Section 2, Possession of Cocaine with Intent to Distribute and Aiding and Abetting. Further, I believe that the above-described property/items to be seized will be found when this warrant is served and based on the

above-listed probable cause, I specifically request authority to seize the items described above and in Attachment B hereto (which is incorporated by reference herein). Therefore, for the reasons set forth in this affidavit and application, I respectfully request that a separate search warrant be issued for cellular phones.

20. I have prepared this affidavit in close consultation with several federal agents with whom I work and Assistant U. S. Attorney Peter Ko in the Southern District of California.

21. I, or any other duly authorized federal agent, will personally serve the warrant requested above, and will be assisted by other duly authorized federal investigators.

I swear the foregoing is true and correct to the best of my knowledge and belief.

DOUGLAS STRUCKMEYER
Special Agent
U. S. Immigration & Customs Enforcement

SUBSCRIBED AND SWORN TO ME BEFORE THIS 29th DAY OF AUGUST, 2008.

PETER C. LEWIS
U. S. MAGISTRATE JUDGE